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7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2013-141*

11 **HEATHER MICHELLE WHEELER**

12 6319 East 89th Place
13 Tulsa, OK 74137

A C C U S A T I O N

14 Registered Nurse License No. 607200

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about September 27, 2002, the Board of Registered Nursing issued Registered
23 Nurse License Number 607200 to Heather Michelle Wheeler ("Respondent"). The Registered
24 Nurse License expired on February 29, 2004, and has not been renewed.

25 **JURISDICTION AND STATUTORY PROVISIONS**

26 3. This Accusation is brought before the Board of Registered Nursing ("Board"),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code ("Code") unless otherwise indicated.

1 4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
2 any licensee, including a licensee holding a temporary or an inactive license, for any reason
3 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
5 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
6 disciplinary action during the period within which the license may be renewed, restored, reissued
7 or reinstated.

8 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
9 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
10 licensee or to render a decision imposing discipline on the license. Section 2811(b) of the Code
11 provides, in pertinent part, that the Board may renew an expired license at any time within eight
12 years after the expiration.

13 7. California Code of Regulations, title 16, section 1419.3 states:

14 “In the event a licensee does not renew his/her license as provided in
15 Section 2811 of the code, the license expires. A licensee renewing pursuant to this
16 section shall furnish a full set of fingerprints as required by and set out in section
1419(b) as a condition of renewal.

17 (a) A licensee may renew a license that has not been expired for more
18 than eight years by paying the renewal and penalty fees as specified in Section 1417
and providing evidence of 30 hours of continuing education taken within the prior
two-year period.

19 (b) A licensee may renew a license that has been expired for more than
20 eight years by paying the renewal and penalty fees specified in Section 1417 and
21 providing evidence that he or she holds a current valid active and clear registered
nurse license in another state, a United States territory, or Canada, or by passing the
Board's current examination for licensure.”

22 8. Section 2761 of the Code states:

23 “The board may take disciplinary action against a certified or licensed
24 nurse or deny an application for a certificate or license for any of the following:

25 (a) Unprofessional conduct, which includes, but is not limited to, the
26 following:

26 ...

27 (4) Denial of licensure, revocation, suspension, restriction, or any other
28 disciplinary action against a health care professional license or certificate by another
state or territory of the United States, by any other government agency, or by another

1 California health care professional licensing board. A certified copy of the decision
2 or judgment shall be conclusive evidence of that action.”

3 9. Section 2762 of the Code states:

4 “In addition to other acts constituting unprofessional conduct within the
5 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
6 person licensed under this chapter to do any of the following:

7 (a) Obtain or possess in violation of law, or prescribe, or except as
8 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
9 himself or herself, or furnish or administer to another, any controlled substance as
10 defined in Division 10 (commencing with Section 11000) of the Health and Safety
11 Code or any dangerous drug or dangerous device as defined in Section 4022.

12 (b) Use any controlled substance as defined in Division 10 (commencing
13 with Section 11000) of the Health and Safety Code, or any dangerous drug or
14 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or
15 in a manner dangerous or injurious to himself or herself, any other person, or the
16 public or to the extent that such use impairs his or her ability to conduct with safety to
17 the public the practice authorized by his or her license.

18 (c) Be convicted of a criminal offense involving the prescription,
19 consumption, or self-administration of any of the substances described in
20 subdivisions (a) and (b) of this section, or the possession of, or falsification of a
21 record pertaining to, the substances described in subdivision (a) of this section, in
22 which event the record of the conviction is conclusive evidence thereof.

23 (d) Be committed or confined by a court of competent jurisdiction for
24 intemperate use of or addiction to the use of any of the substances described in
25 subdivisions (a) and (b) of this section, in which event the court order of commitment
26 or confinement is prima facie evidence of such commitment or confinement.

27 (e) Falsify, or make grossly incorrect, grossly inconsistent, or
28 unintelligible entries in any hospital, patient, or other record pertaining to the
substances described in subdivision (a) of this section.”

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
administrative law judge to direct a licensee found to have committed a violation or violations of
the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Disciplinary Action by Other State)

11. Respondent is subject to disciplinary action under section 2761, subdivision (a)(4) of
the Code in that Respondent was disciplined by the Oklahoma Board of Nursing (“Oklahoma
Board”) and the Missouri State Board of Nursing (“Missouri Board”), as follows:

1 12. On or about November 10, 2009, the Oklahoma Board approved and ordered a
2 Stipulation, Settlement and Order temporarily suspending Respondent's license for two years or
3 until Respondent provides documentation of Respondent's acceptance into the Peer Assistance
4 Program in the disciplinary matter entitled *In the Matter of Heather Michelle Wheeler, RN,*
5 *License No. R0069029.* The circumstances underlying the disciplinary action by the Oklahoma
6 Board are, as follows:

- 7 a. On or about May 9, 2009, Respondent, while employed by NurseFinders and working
8 the night shift at Southcrest Hospital in Tulsa, Oklahoma, exhibited impaired
9 behavior including knocking things over in a patient's room, walking like there was
10 no floor, slow speech and falling asleep on two occasions.
- 11 b. On or about May 7, 8 and 9, 2009, Respondent documented the removal and
12 administration of six doses of Morphine 2mg for a patient. The patient denied
13 receiving the Morphine doses.
- 14 c. Respondent admits to having a problem with controlled dangerous
15 substances/alcohol.

16 13. On or about November 16, 2011, the Missouri Board made findings of fact,
17 conclusions of law and entered a disciplinary order against Respondent revoking her nursing
18 license in the disciplinary matter entitled *State Board of Nursing v. Heather Wheeler* (Case No.
19 2010-000980). The circumstances underlying the disciplinary action by the Missouri Board are,
20 as follows:

- 21 a. On or about April 4, 2011, the Missouri Board and the Respondent executed a
22 Settlement Agreement by which Respondent's license to practice as a registered
23 professional nurse in Missouri was placed on probation for a period of three years
24 with terms and conditions. This disciplinary action was based upon the Oklahoma
25 Board's action against Respondent
- 26 b. The Missouri Board concluded that Respondent violated terms of discipline set forth
27 in the April 4, 2011, Settlement Agreement in that she failed to call National
28

1 Toxicology Specialists ("NTS") for five days, she failed to report to a collection site
2 on June 20, 2011, and she failed to file proof of aftercare with the Board.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct)**

5 14. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
6 Code on the grounds of unprofessional conduct in that Respondent exhibited impaired behavior
7 while on shift and failed to document the removal and administration of Morphine for a patient
8 who denied receiving the Morphine. The conduct is described in more particularity in paragraph
9 12, subdivisions (a) through (c) above, inclusive and hereby incorporated by reference.

10 15. Respondent is subject to disciplinary action under section 2761, subdivision (a) of the
11 Code on the grounds of unprofessional conduct in that Respondent failed to comply with the
12 terms of discipline set forth by the Missouri Board. The conduct is described in more
13 particularity in paragraph 13, subdivisions (a) and (b) above, inclusive and hereby incorporated
14 by reference.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Drug Related Transgressions)**

17 16. Respondent is subject to disciplinary action under section 2762, subdivision (b) of the
18 Code in that Respondent used controlled substances, dangerous drugs or alcoholic beverages to
19 an extent or in a manner dangerous or injurious to herself, others or the public. In Respondent's
20 November 10, 2009, Stipulation, Settlement and Order with the Oklahoma Board she admitted to
21 having a problem with controlled dangerous substances/alcohol. The transgression is described in
22 more particularity in paragraph 12, subdivision (b) of the Code above, inclusive and hereby
23 incorporated by reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 607200, issued to Heather Michelle Wheeler;
2. Ordering Heather Michelle Wheeler to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

August 24, 2012

Louise R. Bailey

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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